

PT 99-45

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**MIDTOWN
EDUCATIONAL
FOUNDATION,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. 95-16-1010

**Real Estate Tax Exemptions
for 1995 Assessment Year**

**P.I.N.S: 17-17-226-010
17-17-226-011
17-17-226-012
17-17-226-013
17-17-226-015
17-17-226-016**

Cook County Parcels

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Scott Saef of Sidley & Austin behalf of the Midtown Educational Foundation.

SYNOPSIS: This proceeding raises the issue of whether those portions of real estate identified by Cook County Parcel Index Numbers 17-17-226-010, 17-17-226-011, 17-17-226-012, 17-17-226-013, 17-17-226-015 and 17-17-226-016 (hereinafter collectively referred to as the "subject property")¹ not specifically exempted from 1995 real estate taxes in the Illinois

1. Any subsequent references to individual parcels shall be to the last three numbers of the appropriate Parcel Index Number. Thus, for example, parcel 17-17-226-010 shall hereinafter be referred to as "010".

Department of Revenue's (hereinafter the "Department") determination dated February 21, 1997 qualify for exemption from such taxes under Section 15-65 of the Property Tax Code, 35 **ILCS** 200/1 *et seq.*

The controversy arises as follows:

Midtown Educational Foundation (hereinafter the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on May 9, 1996. (Dept. Group. Ex. No. 1, Doc. A). The Board reviewed applicant's complaint and thereafter recommended that a partial exemption be granted. (Dept. Gr. Ex. No. 1, Doc. B).

The Department reviewed this recommendation and, on February 21, 1997, issued a determination that found as follows:

- 1st floor is approved for exemption except for the 51-space open parking garage, which is taxable due to lack of exempt use;
- 34% of the 2nd floor is exempt
- The remaining 66% of the 2nd floor is taxable due to lack of exempt use;
- 100% of the 3rd floor is exempt;
- 100% of the 4th is taxable due to lack of exempt use; and,
- 100% of the 5th floor is taxable due to lack of exempt use;²

Dept. Ex. No. 2.

Applicant filed a timely request for hearing as to this partial denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all

2. The Department's determination made no findings whatsoever regarding the taxable or exempt status of the underlying ground. Dept. Ex. No. 2.

evidence and a careful review of the record, I recommend that the Department's determination be modified in accordance with the following analysis:

FINDINGS OF FACT:

A. Preliminary Considerations, Description of the Subject Property and Applicant's Use Thereof

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept Ex. No. 2.
2. The Department's position in this matter is, for present purposes, that certain specifically identifiable areas of the subject property are in exempt use but that other specifically identifiable areas thereof are not. Dept Group Ex. No. 2.
3. The subject property, which applicant acquired ownership of via a special warrantee deed dated June 29, 1994, is located at 310-328 South Peoria, Chicago IL 60601 and improved with a 77,696 square foot building.³ Dept. Group Ex. No. 1, Doc. B; Applicant Ex. Nos. 2, 15; Tr. p. 25.
4. The building is divided into two sections that abut one another. These sections are connected by a small corridor that runs through the middle of the area where the sections converge. Applicant Group Ex. No. 7, Documents B - F.
5. All of the first (or north) section of the building, is situated on parcel 016. The second (or south) section is apportioned among the remaining parcels, with 23% of

3. The subject property also contains an area, located on parcel 015, which is subject to utility and scavenger easements. *See*, Dept. Group Ex. No. 1, Doc. C; Applicant Ex. Nos. 1, 15. Applicant did not present any evidence establishing what, if any, uses it made of this area during 1995. Therefore, I shall omit any further discussion of its exempt status from this Recommendation and proceed as if applicant failed to prove that it was in exempt use throughout the relevant tax year. *See*, rules cited *infra* at p. 15-16.

the building situated on parcel 010, 45% of same positioned on parcel 011, 23% thereof located on parcel 012 and 9% of the building stationed on parcel 013.

Applicant Ex. Nos. 3, 4.

6. The north section occupies a total area of 42,120 gross square feet. This space was, in turn, divided into the following areas and uses throughout the 1995 assessment year:

Area	Square Footage	Use
Basement	7, 020	<ul style="list-style-type: none"> 100% being developed for or actually used in connection with applicant's Metro programs⁴
1 st (Ground) Floor	7, 020	<ul style="list-style-type: none"> 100% used by applicant in furtherance of its Metro program
2 nd Floor	7, 020	<ul style="list-style-type: none"> 100% leased to Access Living of Metropolitan Chicago (hereinafter "Access Living"), an Illinois Not-For-Profit Corporation;
3 rd Floor	7, 020	<ul style="list-style-type: none"> 100% used by applicant in furtherance of its Metro program
4 th Floor	7, 020	<ul style="list-style-type: none"> 3,000 square feet (or 43%) leased to Family Focus, an Illinois Not-For-Profit Corporation; Remaining 4,020 square feet (or 57%) used by applicant for storage and overflow classroom for Metro program.
5 th Floor	7, 020	<ul style="list-style-type: none"> 3,808 square feet (or 54%) used by applicant in for storage; A separate 1,962 square feet (or 28%) was also used by as a classroom for its Metro program; Remaining 1,250 square feet (or 18%) used for purposes which applicant concedes are non-exempt.

Applicant Ex. Nos. 1,2, 3, 8, 9; Applicant Group Ex. No. 7; Tr. pp. 23, 32-39, 75-77, 82-84, 91, 102, 107.

7. The south section contains a 14,700 square foot surface-level parking area that occupies part of P.I.N. 010, all of P.I.N.S 011 and 012 and part of P.I.N. 013. This

4. For details about applicant's Metro program, *see*. Findings of Fact 16-20, *infra* at pp. 7-8.

area contains 51 parking spaces, each of which occupy approximately 180 square feet. Applicant Group Ex. No. 7; Tr. pp. 36,

8. Applicant's employees regularly occupied 23 of the 51 (45%) parking spaces throughout 1995. All but three of these spaces were located along a corridor that started in the far southwest corner of the south section and ran straight north to the far northeast corner thereof. The remaining spaces were located directly to the east of the northeasternmost portion of this corridor.⁵ Applicant Group Ex. No. 7; Doc. B. Tr. p. 86.

9. The remainder of the south section occupies 35,576 gross square feet which was divided into the following areas and uses throughout the 1995 assessment year:

Area	Square Footage	Basic Use
2 nd Floor	8,894	<ul style="list-style-type: none">• 1,154 square feet (or 13%) leased to Access Living;• 2,836 square feet (or 32%) square feet in southwest corner being developed for or used in connection with applicant's Metro program as of February 7, 1995;⁶• Remaining 4,904 square feet (or 55%) used by applicant in furtherance of its Metro program.
3 rd Floor	8,894	<ul style="list-style-type: none">• 100% used by applicant in furtherance of its Metro program.

5. For a schematic drawing of the parking spaces, *see*, Applicant Group Ex. No. 7, Doc. B.

6 This space had previously been occupied by a commercial tenant, the Beverage Testing Institute, (hereinafter "BTI") which vacated this portion of the premises and relocated to another suite within the building on or about January 31, 1995. Applicant Ex. Nos. 10, 21; Tr. pp. 34-35, 41-42.

Area (Cont'd)	Square Footage	Basic Use
4 th Floor	8,894	<ul style="list-style-type: none"> 100% devoted to uses which applicant concedes are non-exempt.
5 th Floor	8,894	<ul style="list-style-type: none"> 1,381 square feet (or 16%) used by applicant in furtherance of its Metro program; Remaining 7,513 (or 84%) devoted to uses that applicant concedes are non-exempt.

Applicant Ex. Nos. 1, 2, 5; Applicant Group Ex. No. 7; Tr. pp. 83-84, 110

10. The Department identified the following areas as being in exempt use: (1) 100% of that portion of the first floor which is situated on the north section; (2) 34% of the second floor that is located on the south section but not leased to Access; and (3) 100% of the third floor, inclusive of the north and south sections. Dept. Ex. No. 2.
11. The Department identified the following areas as being in non-exempt use (1) 100% the parking area, the entirety of which occupies all of the south section of the first floor; (2) 66% of the 2nd floor, which ostensibly includes all portions of the north and south sections leased to Access; (3) 100% of the 4th floor, inclusive of 100% of the north and south sections; and (4) 100% of the 5th floor, also inclusive of 100% the north and south sections. *Id.*
12. Applicant is not challenging those portions of the determination that pertain to the exempt areas. It also is not contesting those portions of the determination which implicitly found that the areas leased to commercial tenants are not in exempt use. Applicant Group Ex. No. 7; Tr. pp. 12, 28-31.
13. Applicant is nevertheless contesting the Department's findings as to the basement level, the parking area, the entire second floor, a portion of the fourth floor and part of

the fifth floor. Applicant is also seeking clarification of the Department's determination as to the exempt status of the underlying ground. *Id.*

B. Applicant's Organizational Structure and Programming

14. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois on October 25, 1985. Its basic organizational objectives are to provide inner city children with programs that prepare them for college and other academic pursuits. Applicant Ex. No. 11; Tr. p. 48.⁷

15. Applicant seeks to achieve these objectives by operating two community centers, the Midtown Center for Boys (hereinafter "Midtown") and the Metro Achievement Center for Girls (hereinafter "Metro"). Tr. p. 58.

16. Midtown and Metro offer various after-school, Saturday and summer programs for school children in the 4th through 12th grades. Applicant makes all of these programs available to the public at large, although it does charge fees for any services it provides in connection therewith. It does, however, waive or reduce these fees so that all of the programs are accessible without regard for anyone's ability to pay. Tr. pp. 58-60.

17. The Midtown program is located at 1819 N. Wood, Chicago, IL 60622, a property that is not at issue herein. Applicant Ex. No. 16.

18. The Metro program is located at that portion of the subject property commonly known as 310 South Peoria Street, Chicago, IL 60607. It consists of three subprograms, the first of which is a one-on-one tutoring program for 4th, 5th and 6th

7. For a more detailed statement of applicant's organizational purposes, *see*, Articles of Incorporation admitted as Applicant Ex. No. 11 and by-laws admitted as Applicant Ex. No. 12.

grade girls. The second is an achievement program that provides assistance in math, science and English to 7th and 8th grade girls; the third is an orientation program that furnishes guidance to college-bound high school girls. Tr. pp. 58-59.

19. Approximately 406 students participated in Metro programs during the 1995 tax year. Another 535 participated in Midtown programs throughout that time. Applicant Ex. No. 16

C. Access Living's Organizational and Financial Structure and Use of the Subject Property

20. Access Living was incorporated under General Not For Profit Corporation Act of Illinois on June 15, 1984. Its basic organizational objectives are, per its Articles of Incorporation, to: (1) enhance the options available to disabled persons so they may choose and maintain individualized and satisfying lifestyles; (2) offer expert independent living services, public education and awareness, and assistance in advocacy for citizens with disabilities; and (3) operate whenever possible through disabled persons and consumers and encourage active consumer involvement in all its activities. Applicant Ex. Nos. 23, 27.

21. Access Living provides case management services to the disabled and operates a housing advocacy program.⁸ The case management services are funded by a pass-through grant from the Department of Housing and Urban Development (hereinafter "HUD")⁹ and involve caseworkers, employed by Access Living, making home visits

8 . For details about these programs, and other services that Access Living provides, *see*, Applicant Ex. No. 29.

9. HUD passes this grant through the City of Chicago Mayor's Office for People with Disabilities. Applicant Ex. Nos. 27, 28, 29. *See also*, Finding of Fact 22 and footnote 9, *infra* at p. 9.

- in order to determine whether disabled persons are eligible for supportive services needed to maintain or improve an independent lifestyle. Applicant Ex. No. 29.
22. The housing advocacy programs are divided into two components. The first, entitled the "Joint Enforcement for Disability Access Program" or "JEDA", coordinates and provides funding to "a group of centers for independent living united against housing discrimination." Those involved with JEDA follow up on reported abuses and fight to increase the number of available, affordable/accessible housing units the community." *Id.*
23. The second component provides a variety of services to battered women with disabilities, such as crisis intervention, advocacy, counseling and a support group for deaf battered women. *Id.*
24. Access Living operates on a fiscal year that runs from July 1 of each calendar year through the ensuing June 30. Its sources of revenue for the fiscal years ending June 30, 1995 and June 30, 1996 were as follows:

SOURCE	AMOUNT (6/30/95)	% OF TOTAL¹⁰ (6/30/95)		AMOUNT (6/30/96)	% OF TOTAL (6/30/96)
General public, corporate and foundations	\$ 392,573.00	22%		\$ 503,258.00	28%
Fees and grants from governmental agencies ¹¹	\$1,114,087.00	61%		\$1,054,433.00	58%
United Way of Chicago	\$ 69,724.00	4%		\$ 87,429.00	5%
Special Events	\$ 133,933.00	7%		\$ 147,931.00	8%
Interest	\$ 15,091.00	1%		\$ 17,008.00	1%
Consulting Fees	\$ 86,297.00	5%		\$ 19,087.00	1%
Unspecified Other	\$ 2,901.00	<1%		\$ 0.00	N/A
TOTAL	\$1,814,606.00			\$1,829,146.00	

Applicant Ex. No. 28.

25. Access Living's expenses for the same periods were as follows:

EXPENSE	AMOUNT (6/30/95)	% OF TOTAL (6/30/95)		AMOUNT (6/30/96)	% OF TOTAL (6/30/96)
Program Services					
Disability Rights	\$ 398,696.00	22%		\$434,183.00	25%
Independent Living Services	\$ 901,240.00	50%		\$801,236.00	47%
Public Education	\$ 168,706.00	9%		\$121,590.00	7%
Total Program Services	\$1,468,642.00	82%		\$1,357,009.00	79%
EXPENSE (Cont'd).	AMOUNT (6/30/95)	% OF TOTAL (6/30/95)		AMOUNT (6/30/96)	% OF TOTAL (6/30/96)
Supporting Services					

10. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. For example, \$503,258.00/\$1,829,146.00=.2751 (rounded four places past the decimal) or 28%.

11. Access Living received these revenues pursuant to agreements which it entered into with various governmental agencies. In substance, these agreements called for Access Living to receive payments in exchange for providing services that effectuate various governmental programs. The major sources of such payments were as follows:

Source	Program	'95 Amount	% of Total		'96 Amount	% of Total
Department of Education	Centers for Independent Living	\$273,159.00	25%		\$280,807.00	27%
HUD, which e passes these funds through the City of Chicago Mayor's Office for People with Disabilities	Case Management Services	\$214,000.00	19%		\$214,000.00	20%
HUD	JEDA	\$197,381.00	18%		\$197,381.00	19%
Totals		\$684,635.00	62%		\$692,284.00	66%

Applicant Ex. Nos. 27, 28.

General Management	\$ 183,661.00	10%		\$ 193,332.00	11%
Development	\$ 148,377.00	8%		\$ 169,345.00	10%
Total Supporting Services	\$ 332,038.00	18%		\$ 362,677.00	21%
Total Expenses	\$1,800,680.00			\$ 1,719,686.00	
Reconciliation:					
Total Revenues	\$1,814,606.00			\$ 1,829,146.00	
Less Total Expenses	-\$1,800,680.00			-\$ 1,719,686.00	
Equals Excess Revenues	\$ 13,926.00				

Id.

26. Access Living applies all excess revenues to future programming needs. Tr. pp. 120-121.

27. The Internal Revenue Service has issued Access Living an exemption from federal income tax. The Service issued this exemption, which remained in full force and effect throughout the 1995 assessment year, pursuant to Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 25; Tr. p. 116.

28. The Department has issued Access Living an exemption from Illinois Use and related sales taxes. The Department issued this exemption, which remained in full force and effect throughout the 1995 assessment year, pursuant to its finding that Access Living was "organized and operated exclusively for charitable ... purposes." within the meaning of Section 105/3-5(4), of the Use Tax Act, 35 **ILCS** 105/1 *et seq.* Applicant Ex. No. 26.

29. Access Living obtained its leasehold interest in the subject property pursuant to a lease originally dated June 8, 1988. This lease has been subject to numerous amendments but provides in substance that Access Living shall: (1) pay applicant certain sums certain as rent; (2) have its rent adjusted in order to account for increases in property taxes and other operating expenses incurred by applicant; and (3) use the leasehold only for general office purposes. Applicant Ex. No. 8.

30. Access Living in fact used the leasehold for general office purposes, including providing services that administered its various programs for the disabled throughout 1995. Tr. pp. 126-128.

D. Family Focus's Organizational Structure, Programming and Use of the Subject Property

31. Family Focus was incorporated under the General Not-For Profit Corporation Act of Illinois on June 30, 1976. Its organizational purposes are, per by-laws, to provide leadership in promoting optimal development of children, especially during the years from birth through three, by supporting and strengthening families. Applicant Ex. Nos. 32, 33.

32. Family Focus seeks to accomplish these goals by operating five community-based "drop-in centers" in the Chicago area. One of the centers is located in Aurora, two are located in Evanston, another is in Lawndale and the fifth is located in the Erie neighborhood of Chicago. Applicant Ex. No. 36.

33. With minor variations in emphasis, Family Focuses offers programs on topics such as literacy, adolescent pregnancy, parenting and pregnancy prevention at each of the "drop-in centers".¹²

34. Four out of the five "drop in centers" are located in portions of real estate that Family Focus rents from unspecified lessors. The Department has not made any determination as to whether these leaseholds are exempt from real estate taxation as of the date of this Recommendation. Applicant Ex. Nos. 36, 37, 38; Administrative Notice.

12. For details about the programs that Family Focus presents at each individual "drop-in center" *see*, Applicant Ex. No. 36.

35. The fifth "drop in center" is situated on real estate that Family Focus owns and manages. The exempt status of this property, located in Evanston and identified by Cook County Parcel Index Number 10-13-201-027, was at issue in Family Focus v. Department of Revenue, 88-16-185. In that case, the Director of Revenue determined that: (1) Family Focus qualified as an "institution of public charity" for property tax purposes; and (2) those portions of the property wherein Family Focus conducted pregnancy prevention and other adolescent programming, were "exclusively used for charitable purposes" and therefore, exempt from real estate taxes for 86% of the 1988 tax year.¹³ Administrative Notice.

36. Family Focus obtained its leasehold interest in the subject property pursuant to a lease originally dated August 31, 1990. This lease has been subject to numerous amendments but provides in substance that Family Focus shall: (1) pay applicant certain sums certain as rent; (2) have its rent adjusted in order to account for increases in property taxes and other operating expenses incurred by applicant; and (3) use the leasehold only for general office purposes. Applicant Ex. No. 9.

37. Family Focus in fact used the leasehold for general office purposes, including, *inter alia*, providing administrative and financial support for its various drop-in centers, throughout 1995. Tr. p. 151.

13 . The exemption was limited to 86% of the relevant tax year because Family Focus did not acquire ownership of the property until February 22, 1988. This exemption was also limited to those areas which Family Focus actually used for adolescent programming because Family Focus leased the remaining portions to two separate lessees, (the Mount Moriah Lodge No. 28 and the City of Evanston Recreation Department), neither of which used their respective leaseholds in furtherance of Family Focus's exempt purposes. Administrative Notice.

38. Family Focus's employees regularly used 3 of the 51 spaces contained within the parking area during 1995. Tr. p. 153.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting specifically identifiable portions of the subject from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that parts of the said property do not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be modified as set forth below. In support thereof, I make the following conclusions:

A. Constitutional Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or

limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

B. Statutory Considerations and the Burden of Proof

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 **ILCS** 200/1-3 *et seq.*). The provisions of the Code that govern disposition of the instant proceeding are found in Section 15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 **ILCS** 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

C. Analysis

Here, the relevant statutory exemption pertains to "institutions of public charity". Our courts have long refused to grant relief under Section 15-65 absent appropriate evidence that the property in question is: (1) owned by an entity that qualifies as an "institution of public charity";

and, (2) "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

In this case, the Department has implicitly concluded that applicant qualifies as an "institution of public charity" by basing its partial denial solely on lack of exempt use. Applicant has not challenged the Department's finding as to its exempt status herein. Accordingly, I shall leave same undisturbed and devote any remaining analysis to the use issue.

Analysis of that use issue begins with recognition of the fundamental principle that the word "exclusively" when used in Section 15-65 and other exemption statutes means the primary use to which real estate is put. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) (hereinafter "IIT"). This principle is, however, subject to variable applications in the following "distinct situations[:]"

First is the case where the property as a whole, or in unidentifiable portions is used both for an exempting purpose and a non-exempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [citations omitted]. In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a non-exempting purpose or not at all. [citations omitted].

IIT at 66.

This case falls into the latter category because the floor plans submitted as Applicant's Group Ex. No. 7, and the testimony given in support thereof, make it possible to identify each disputed portion of the subject property according to use. These areas can also be classified into the following groupings, which I shall use in order to enhance organization and promote greater clarity: (1) portions applicant used in furtherance of its Metro program; (2) portions being

developed for use in connection with that program; (3) storage areas; (4) portions leased to other not-for-profit corporations; (5) the parking area; and, (6) summary.

1. Portions Used in Connection with the Metro Program

In this case, the Department has exempted some, but not all, of the areas applicant uses for Metro-related purposes. By doing so, it has taken an inconsistent position as to whether such uses qualify as "exclusively charitable" uses within the meaning of Section 15-65 of the Property Tax Code.

"Charitable" uses are those which, *inter alia*, accommodate those who are unable to pay any fees that applicant charges. Small v. Pangle, 60 Ill. 2d 510, 518 (1975).¹⁴ Applicant charges fees for Metro-related services but makes appropriate accommodations for those who are unable to pay. (Testimony of applicant's executive director, James Palos, at Tr. p. 60). For this reason, and because there are no other legal or factual impediments to suggest that the Metro program does not qualify as being "charitable", I conclude that the areas wherein applicant actually provided Metro-related services were "exclusively used for charitable or beneficent purposes", as required by Section 15-65, during 1995.

The floor plans submitted as Applicant Group Ex. No 7, together with the testimony of applicant's Treasurer, Jacqueline Taylor (Tr. pp. 72-87) and its College Orientation Director, Christy Acosta (Tr. pp. 105-110), prove that applicant used the following areas of the subject property to provide Metro-related services during 1995: (1) 100% of the north section ground floor; (2) 100% of the north section third floor; (3) 1,962 square feet, or 28%, of the north section fifth floor; (4) 4,904 square feet, or 55%, of the south section second floor; (5) 100% of

14. For further discussion of the requirements for "charitable" status, *see*, discussion of Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), *infra* at p. 22.

the south section third floor; and (5) 1,381 square feet, or 16%, of the south section fifth floor. Therefore, the Department's determination should be modified to reflect these exemptions.

2. Storage Areas

Areas of real estate used for storage and other administrative purposes are subject to exemption in certain circumstances. These situations are limited to those where applicant proves that its use of the areas in question is "reasonably necessary" to effectuate other exempt activity. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991); Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992).

The floor plans (Applicant Group Ex. No. 7) and explanatory testimony in support thereof (Tr. pp. 82-84, 107) establish that applicant used two areas of the subject property for storage purposes that were "reasonably necessary" to effectuate the charitable purposes of the Metro program during 1995. The first area was a 4,020 square foot area that comprised 57% of the total square footage located on the fourth floor of the north section. The second was a 3,808 square foot area that occupied 54% of total square footage situated on the north section of the fifth floor. Therefore, the Department's determination should be modified to reflect that these areas are exempt from real estate taxes for 100% of the 1995 assessment year.

3. Portions Being Developed for Uses Connected with the Metro Program

Since Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), our courts have recognized that modern construction is an inherently complex and time-consuming process. Accordingly, evidence that applicant was actively adopting and developing the subject property for eventual exempt use during the tax year in question is sufficient to satisfy the exempt use requirement. *Id.*

Based on the first architectural drawing (applicant Ex. No. 19), the construction log (Applicant Group Ex. No. 22, Doc. B), and the explanatory testimony offered in support thereof (Tr. pp. 75-78, 87-105), I conclude that applicant was actively involved in adopting the north section basement for Metro-related uses throughout the 1995 assessment year. Therefore, the Department's determination should be modified to reflect that this area is exempt from real estate taxes for 100% of the 1995 assessment year.

The Department's determination should also be modified to reflect that 2,836 square feet of building space located on the south section of the second floor is exempt from for 90% of the 1995 tax year. This area, which occupies 8% of the total building area of the south section building area,¹⁵ (or 4% of the building as a whole),¹⁶ was used for non-exempt commercial leasing purposes¹⁷ until January 31, 1995. However, the remaining construction logs (parts of Applicant Group Ex. No. 22) and the testimony offered in support thereof (Tr. pp. 78-79, 102-104), prove that applicant began developing this area for Metro-related uses on February 7, 1995.

This evidence also establishes that applicant was either completing the development process or actually using the aforementioned area for Metro-related purposes throughout the remainder of 1995. Consequently, said area should be exempt from real estate taxes for 90% of the 1995 assessment year under Section 200/9-185 of the Property Tax Code.¹⁸

15. $2,836/35,576 = 0.0797$ (rounded) or 8%

16. $2,836/77,696 = 0.0365$ (rounded) or 4%.

17. For analysis as to why commercial leasing and other income-producing uses are non-exempt, *see*, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336 (2nd Dist. 1988), leave to appeal denied.

18. The relevant portion of that provision states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

4. Portions Leased to Other Not-For-Profit Corporations

In Children's Development Center v. Olson, 52 Ill. 2d 332 (1972) (hereinafter "Olson"), the Illinois Supreme Court held that leasehold interests, such as the ones held by Family Focus and Access Living, can be separately exempted from the underlying fee if: (1) the lessor qualifies as an exempt entity; and, (2) the lessee also qualifies as an exempt entity; and, (3) the lessee uses the demised premises for purposes that would qualify as exempt if the lessee owed the allegedly exempt leasehold, provided that neither the lessor nor the lessee are profiting from the enterprise.

Here, the Department has previously determined that the applicant-lessor qualifies as an exempt entity. *See, supra* at p. 16. It has further determined, via the Recommendation for Disposition in Docket No. 88-16-185, that Family Focus qualifies as an "institution of public charity" for property tax purposes and further, that the pregnancy prevention and other "drop in center" uses of the one property that it owns qualify as being "exclusively charitable." For these reasons, and because Family Focus used all of the space it leased from applicant for administrative purposes that were "reasonably necessary" to effectuate charitable activity at this and its other "drop in centers," I conclude that this leasehold satisfies the requirement, set forth in Olson, of being exclusively used for exempt purposes. Therefore, the Department's determination should be modified to reflect that this area, which occupies 3,000 square feet, or 43%, of the 7,020 square feet located on the forth floor of the north section, should be exempt from real estate taxes for 100% of the 1995 assessment year.

With respect to the areas applicant leases to Access Living, the Department has yet to determine that Access Living qualifies as an "institution of public charity" for property tax purposes. Nor has the Department issued any administrative adjudications establishing the exempt status of any real estate it may own. Therefore, I can not determine whether Access

Living's leasehold should be exempt under Olson without first resolving the threshold inquiry of whether it qualifies as a "charitable" organization.

Analysis of that question starts with recognition of the following definition:

... charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

Korzen, *supra* at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

One must also recognize that "institutions of public charity":

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen, *supra*, at 157.

Based on the financial statements submitted as Applicant Ex. Nos. 27 and 28, I conclude that Access Living's financial structure does not conform to that of an "institution of public charity". These documents reveal that Access Living derives the vast majority of its funding from contracts with various governmental agencies. The precise terms of these contracts are unknown because applicant did not introduce them into the record. However, the financial statements clearly indicate that their basic terms call for Access Living to provide certain case management, housing advocacy and other services in exchange for governmental payments.

Access Living then expends these governmental funds on programs that furnish whatever services the contracts require it to provide. Such an arrangement is more consistent with the types of arm's length business transactions found in the non-exempt commercial marketplace than dispensation of "charity." Consequently, I conclude that Access Living fails to qualify as an "institution of public charity" because its primary function is to do business with the governmental agencies that fund its programs, not to dispense "charity" to those who receive its services.

Applicant Ex. Nos. 29 and 30 set forth a great deal of information about these services, which include, *inter alia*, seminars, workshops, peer support groups and disability rights counseling. These documents also provide much information about the population that Access Living serves. However, I emphasize that Access Living serves that population primarily through a series of programs that derive most of their funding from government contracts. Thus, any "charitable" services dispensed pursuant to those contracts is but the incidental by-product of Access Living's non-exempt business relationships with the government agencies that fund its programs.

Access Living's exemptions from federal income and Illinois Use tax do not alter the preceding conclusions. The former exemption establishes only that Access Living qualifies as an exempt organization under the relevant provisions of the Internal Revenue Code, none of which preempt Section 15-65 of the Property Tax Code. Moreover, our courts have repeatedly held that exemptions from Illinois Use and related taxes do not have any *res judicata* or other determinative effect in property tax cases. In re Application of Clark v. Marion Park, Inc., 80 Ill. App.3d 1010, 1012-13 (2nd Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). For this and all the aforesaid reasons, I conclude that Access Living fails to qualify as an exempt entity. Consequently, its leasehold interest in the subject property is not subject to exemption under Olson . Therefore, the Department's determination should be modified to reflect that this leasehold, which occupies 7,020 square feet,

or 100% of the second floor of the north section and 1,154 square feet, or 13%, of the second floor of the south section, is not exempt from 1995 real estate taxes.

5. The Parking Area

Parking areas are subject to exemption under Section 15-125 of the Property Tax Code provided that said areas are: (1) not leased or otherwise used for profit; and (2) used as part of a use for which an exemption is provided by this Code; and (3) owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption. 35 ILCS 200/15-125.

Nothing in the totality of applicant's documentary and testimonial evidence suggests that the parking area was leased or otherwise used for profit during 1995. Furthermore, the special warrantee deed (Applicant Ex. No. 15) proves that applicant, a recognized "institution of public charity" owned the entire subject property, including the parking area, throughout that time. Therefore, the only remaining question is the extent to which this area was "used as part of a use for which an exemption is provided by this Code."

Based on the testimony of applicant's treasurer, Jacqueline Taylor, (Tr. p. 86), and that of Family Focus's comptroller, Robert Shank (Tr. p. 153), I conclude that: (1) applicant's employees regularly used 23 of the 51 spaces contained within the parking area; and, (2) Family Focus's employees regularly used another 3 of the 51 spaces contained therein. Accordingly, the following computations disclose that 4,682 square feet, or 32%, of the total square footage of this 14,700 square foot area should be exempt from real estate taxes for 100% of the 1995 tax year:

Equation	Computations
1. Total Number of Parking Spaces (51) x Total Square Footage of Each Parking Space (180) = Total Square Footage of Parking Space Area	$51 \times 180 = 9,180$ square feet
2. Number of Spaces Regularly Occupied By Applicant's Employees (23) + Number of Spaces Regularly Occupied By Family Focus's Employees (3)/ Total Number of Spaces (51) = Percentage of Parking Spaces Regularly Occupied by Exempt Users	(a) $23 + 3 = 26$; (b) $26/51 = 51\%$
3. Total Square Footage of Parking Space Area (9,180) x Percentage of Parking Spaces Regularly Occupied By Exempt Users (51%) = Total amount of exempt parking space area in square feet	$9,180 \times 51\% = 4,682$ square feet
4. Total amount of exempt parking space (4,682)/ Total square footage of parking area (14,700) = Total percentage of exempt space in parking area	$4,682/14,700 = 32\%$

With respect to Access Living's use of the parking area, I briefly reiterate that this entity fails to qualify as an "institution of public charity" for property tax purposes. Therefore, it is of no consequence that its employees regularly used 7 spaces within the parking area.

6. Summary

Taken as a whole, the preceding analysis establishes that the following areas of the subject property should be exempt from 1995 real estate taxes for 100% of the 1995 assessment year:

Section/Area	Exempt Square Footage	Non-Exempt Square Footage	% of Exempt Square Footage
North Section			
Basement	7,020	0	100%
1 st Floor	7,020	0	100%
2 nd Floor	0	7,020	0
3 rd Floor	7,020	0	100%
4 th Floor	7,020	0	100%
5 th Floor	5,770	1,250	82%
Total for North Section	33,850	8,270	80%

Section/Area (Cont'd)	Exempt Square Footage	Non-Exempt Square Footage	% of Exempt Square Footage
South Section			
1 st Floor (Parking Area)	4,682	10,018	32%
2 nd Floor	4,904	3,990 ¹⁹	55%
3 rd Floor	8,894	0	100%
4 th Floor		8,894	0
5 th Floor	1,381	7,513	16%
Total for All of South Section (Including Parking Area)	19,861	30,415	40%²⁰
Total for South Section Building Area (Excluding Parking Area)	15,179	20,397	43%²¹
Total Exempt Area in 77,696 sq. ft. building (Excluding Parking Area)	49,029²²	28,667	63%²³

Furthermore, the 2,836 square feet of area located on the south section of the second floor that applicant began developing for its own use as of February 7, 1995 should be exempt from

19. This figure consists of the 1,154 square foot leasehold held by Access Living plus the 2,836 square feet that applicant began developing for its own use as of February 7, 1995. I included former area because it was not in exempt use throughout 1995, the latter because this chart reflects only those areas that are exempt for 100% of the 1995 assessment year.

20. (a) 14,700 sq. ft. (parking area) + 35, 576 sq. ft. (building) = 50,276 sq. ft total square footage of south section as a whole;
(b) 4,682 sq. ft (total exempt area in parking area) + 15,179 (total exempt area in south section of building) = 19,861 total exempt square feet in south section as a whole;
(c) 19,861/50,276 sq. ft. = .3950 (rounded) or 40%.

- (a) 50,276 sq. ft - 14,700 sq. ft. = 35,576 sq. ft;
(b) 19,861 sq. ft. - 4,682 sq. ft. = 15,179
(c) 15,179 sq. ft./35,576 sq. ft. = 0.4267 (rounded) or 43%

22. 33,850 sq. ft. (north section building) + 15,179 sq. ft (south section building) = 49,029 sq. ft.

23. 49,029 sq. ft./77,696 sq. ft. = .6310 (rounded) or 63%.

1995 real estate taxes for 90% of the 1995 assessment year. This area represents 8% of the 35,576 square foot building located on the south section and 4% of the 77,696 square foot building as a whole. Therefore, the Department's determination should be modified to reflect this and all the aforementioned exemptions.

WHEREFORE, for all the above stated reasons, it is my recommendation that:

- 1 15,179 square feet, or 43%, of the 35,576 square foot building located on portions of real estate identified by Cook County Parcel Index Numbers 17-17-226-010, 17-17-226-011 17-17-226-012 and 17-17-226-013, and a corresponding percentage of its underlying ground, be exempt from real estate taxes for 100% of the 1995 assessment year;
- 2 Another 2,836 square feet, or 8%, of the 35,576 square foot building located on real estate identified by Cook County Parcel Index Numbers 17-17-226-010, 17-17-226-011 17-17-226-012 and 17-17-226-013, and a corresponding percentage of its underlying ground, be exempt from real estate taxes for 90% of the 1995 assessment year;
- 3 4,682 square feet, or 32%, of the 14,700 square foot parking area situated on portions of real estate identified by Cook County Parcel Index Numbers 17-17-226-010, 17-17-226-011, 17-17-226-012 and 17-17-226-013, and a corresponding percentage of its underlying ground, be exempt from real estate taxes for 100% of the 1995 assessment year;
- 4 33,850 square feet, or 80%, of the 42,120 square foot building situated real estate identified by Cook County Parcel Index Number 17-17-226-016, and a

corresponding percentage of its underlying ground, be exempt from real estate taxes for 100% of the 1995 assessment year.

Date

Alan I. Marcus
Administrative Law Judge